AFFIDAVIT OF FRANCIS L. McLAIN

My name is Francis L. McLain. I am also known as Frank McLain. I am a citizen of Montana and of the United States. I am also a voter.

I moved my residency to Park County Montana from Hennepin County Minnesota in June 1999.

At about 8:30 AM on the morning of November 2, 2000, I went to the Park County government Center to convert my Minnesota Driver's License to a Montana Driver's License and to register to vote in the Presidential Election of November 7, 2000. I was granted my Montana Driver's License on the spot, and was told that I could register to vote in Montana, but was denied the right to vote in the upcoming November 7th election because they said I had to register to vote 30 days before the election. This surprised me, and made me wonder how many other voters have been turned away from the election polls on a similarly discriminatory basis (or by such a capricious rule). I thought this was preposterous.

Having been a voter in Minnesota, I knew that if I were in Minnesota, I could have registered the very day of the election if another registered voter in Minnesota would vouch for me having been a resident for over 30 days. Now, since I had crossed the State line and moved to Montana, suddenly I had lost my right to vote. My vote is precious to me. It is the best way that I can freely and privately express my values and my viewpoint on life, liberty, and the pursuit of happiness without any intimidation. I would like to feel that my vote can make a difference, and that the opinions through my vote are valued.

I went home miffed and called my mother in Minneapolis to see if there was still a chance to be able to vote as an absentee. My mother gave me the number of where to reach my former voter registrar in Hennepin County in Minnesota.

I thereby made a long-distance call to the phone number for voter registration in Hennepin County Minnesota. I was put on hold for about 12 to 15 minutes before I was able to talk with someone in person about how to ask for and receive an absentee ballot. I was told that I had to fax a statement about my present circumstances and why I would not be able to be in Minnesota to cast my ballot on election day. Basically I was told I had to fabricate a scenario of why I was here in Montana so it would seem that I was still a Minnesota resident. I was asked to show the address of

my old Minnesota residence, and give the address in Montana to where the absentee ballot was to be sent. I had to sign and date the request. I was also told that I would have to receive the ballot by Monday November 6th, and then overnite the ballot to be received back in Minnesota by November 7th, or my vote would not count. I felt I was put under unnecessary pressure emotionally and financially just so I could cast my vote.

Still I believe it is my responsibility as well as my right to vote. I thereby faxed a letter directly to the voter registration office in Hennepin County Minnesota on that Thursday afternoon at about 2:30 PM Montana time, and had to trust that I would receive the ballot by Monday Noon on November 6th (when the U.S. mail usually comes to my rural residence in Montana), so that I could mark my ballot and have enough time to drive into town and overnite it back (at a cost of $11.75) by the 3:00 PM deadline which the Livingston office of the US Post Office gives for next-day US Express Mail.

In order to vote this time, it was going to cost me dearly. I was going to have to take a good portion of a day off from my business in order to have the time and logistics to receive my ballot, fill it out, have it witnessed, and overnite it back to Minnesota. Unfortunately, there was a heavy snowstorm on Sunday night and early Monday morning, and thereby all mail was delayed that fateful Monday. My mail with the absentee ballot did not reach me until 4:30 PM on that day. Therefore, I was left "out-in-the-cold", and felt totally disenfranchised because my vote would not make it to the officials on time to be counted on November 7th.

While watching the election results on the next three days on November 7th, 8th, and 9th, because of all the attention focused on the closeness of the Florida results, I was surprised to find out that absentee ballots in Florida would still be counted 10 days after the election if the postmark on those ballots was made on or before November 7th.

A question came to me, why was I told that I had to have my ballot physically in their office on November 7th in order for it to be counted? Why should there be any difference in the federal election procedures from state to state? I realized that many people are cut off from their right to vote because of voter registration laws which place too heavy a burden on the common person who has recently moved or who has never been registered or who is not near a polling place on election day.

It pains me to think that my personal right to vote has been usurped. I still want my absentee ballot to count in this election. That is why I filed this lawsuit in good faith, that this court will grant me the relief that I implore. I have enclosed the absentee ballot, which I consider sacred, and trust that this court will deliver it into the hands of justice, so that my right is secured and my voice is heard.

"s/Francis L. McLain"
Francis L. ("Frank") McLain
82 McDonald Creek Road
Livingston, Montana 59047

Below is a copy of Frank McLain's absentee ballot return envelope being held as evidence with District Court

WARD_____ PRECINCT _____

ELECTION DATE _____

REVISED 2000 ELECTION SYSTEMS & SOFTWARE 62AVE OS

ABSENTEE BALLOT RETURN ENVELOPE

NO POSTAGE STAMP NECESSARY
POSTAGE HAS BEEN PREPAID BY:

CITY OF MINNEAPOLIS ELECTIONS DEPARTMENT
350 SOUTH 5TH STREET RM 1B
MINNEAPOLIS MN 55415-1396

AFFIDAVIT OF HARLEY McLAIN

My name is Harley McLain. I am a citizen of North Dakota and the United States. I am also a voter.

When I voted in November 2000, I knew that my vote for President would be represented at the meeting of the Electoral College on December 18, 2000 only if the candidate for whom I voted could garner the plurality of the popular vote in North Dakota. I knew that the candidate who did so would get all three of North Dakota's Electoral College votes.

As it turned out, the Bush/Cheney team won handily in North Dakota. As a "Gore/Lieberman" voter, I could accept that my vote would not be counted on December 18. This ready acceptance is based on two facts. One, the Electoral College set-up as penned by the framers of our Constitution protects the interests of my small rural state. It protects us against the potential tyranny of the vast majority of the voters who live in a relatively few high-density population areas. While we value them as consumers, we know that they have little interest in the problems of the raw-material-producing rural areas of this great nation.

Two, the ballot in North Dakota was a fair ballot that gave my candidate a fair shot at winning. Our ballot met a Constitutional Standard of fairness. It was a rotating ballot that filled the top spot on the ballot with the Gore/Lieberman choice just as often as that top spot was filled with the Bush/Cheney choice as well as all the other presidential candidates. With such a rotating ballot, "winner-take-all" is eminently fair.

This rotating ballot is used in all elections in North Dakota because the Federal Courts ruled in *McLain v Meier* (cite: 637 F.2d 1159, 1980) that the state of North Dakota must change its ballot positioning in order to meet Constitutional muster. In short, anytime one candidate's name appears universally at the top of a ballot, that candidate is likely to enjoy an automatic 5% advantage in that election (cite: 637 F.2d 1166, 1980).

In North Dakota that unfair advantage no longer exists....and I am reassured of the fundamental fairness of the process in spite of the fact that

my "Gore" vote will count for nothing when the Electoral College meets.

In Florida, on the other hand, the Bush/Cheney choice enjoyed a 5% advantage "coming in" due to the fact that the Bush/Cheney choice appeared always at the top of the ballot (by state law) in that state. How can such a ballot scheme be Constitutional in Florida when it was not Constitutional in North Dakota?

But another question is perhaps even more important to me.

How can I "rest easy" knowing that the balancing effect of the Electoral College as intended by the framers of our Constitution is being subverted by an unfair and unconstitutional ballot in Florida as well as other states?

Since we in North Dakota have a fair and constitutional ballot, I as a "Gore" voter can accept defeat in a "winner-take-all" process-- as long as I know that each voter in every state is playing by the same rules.

In November 2000, the voters in Florida were not playing by the same rules. The Bush/Cheney choice was handed a 5% lead before the first votes were counted. In the present circumstances, that unfair advantage seems to be making all the difference.

And I am feeling "hard-put" to see how the value of my vote is enjoying the equal protection of the law.

"s/Harley McLain"
P.O. Box 752
Valley City, ND 58072

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

HARLEY McLAIN,

Plaintiff,

v.

BEN MEIER, Secretary of State
and ALLEN OLSON, Attorney General,

Defendants.

Filed Dec 17,1980
Cletus J. Schmidt, Clerk
U.S. District Court-North Dakota

No. A78-3075

JUDGMENT

Pursuant to the order for judgment entered this date,

IT IS ADJUDGED AND DECREED that N.D.C.C. 16-04-20(4) and N.D.C.C 16-11-06 violate the Fourteenth Amendment to the Constitution of the United States.

IT IS FURTHER ADJUDGED AND DECREED that plaintiff's challenge to the constitutionality of N.D.C.C. 16-11-05(4) is dismissed.

Dated this 17th day of December, 1980.

"s/ PAUL BENSON", CHIEF JUDGE
UNITED STATES DISTRICT COURT

CERTIFIED COPY
Original Filed with Clerk of Court
Attest:
Edward J. Klecker, CLERK
United States District Court
District of North Dakota
By "s/ JoAnn Ordahl"
Deputy Clerk

APPENDIX C

DECLARATION OF INDEPENDENCE

We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed,...

PREAMBLE OF THE UNITED STATES CONSTITUTION

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States.

ARTICLE III. SECTION 2

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; .... to controversies to which the United States shall be a party;---to controversies between two or more States; [between a State and Citizens of another State;] ---between Citizens of different States;---between Citizens of the same State claiming lands under grants of different States, and between a State, or the Citizens thereof, and foreign States, [Citizens or Subjects].

ARTICLE IV.

Section 1. Full faith and credit shall be given in each State to the public Acts, Record, and judicial Proceeding of every other State. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.
Section 2. (1) The Citizens of each State shall be entitled to all privileges and immunities of Citizens in the several States.
Section 4. The United States shall guarantee to every State in this Union a republican form of government,...

AMENDMENT I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for the redress of grievances.

AMENDMENT XII.

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other disability of the President--.....

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United

States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 42 U.S.C. Section 1983. Civil action for deprivation of rights.

Every person who, under the color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

TITLE 42 U.S.C. Section 1985. Conspiracy to interfere with civil rights
(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway of on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving and securing to all persons within such State or territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

Title 28 U.S.C. 1343. Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person;

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

MONTANA STATUTE 13-2-301(1)(a)
Close of Registration- Procedure

(1) The election administrator shall: (a) close registrations for 30 days before any election.

NDCC 16-11-06 (declared unconstitutional in 1980)

The [general election] ballot provided for in section 16-11-05 shall be arranged as follows: *The names of the candidates of the party casting the highest number of votes in the state for members of Congress at the last preceding general election shall be arranged in the first or left-hand column of such ballot* (emphasis added); of the party casting the next highest number of votes in the second column; of the party casting the next highest number of votes in the third column; and of such other party as the secretary of state may direct for state officers.

Florida Election Code Title 9 Section 101.151.(4):

The names of the candidates of the party which received the highest number of votes for Governor in the last election in which a Governor was elected shall be placed first under the heading of each office (emphasis added), together with an appropriate abbreviation of party name; the names of the candidates of the party which received the second highest vote for Governor shall be second under the under for each office, together with an appropriate abbreviation of the party name.

Texas Election Code Title 5 Section 52.091(b):

Columns of parties specified by Subsection (a)(1) shall be arranged in descending order of the number of votes received statewide by each party's candidate for governor in the most recent gubernatorial general election, beginning on the left with the party whose candidate received the highest number of votes (emphases added). Columns of the parties that did not have a candidate for governor in the most recent gubernatorial general election shall appear after the columns of parties that had a candidate, and the order shall be determined by a drawing conducted by the secretary of state.

New Hampshire Title LXIII, Chapter 656, Section 656:5, II

The name of each candidate shall be grouped according to the party which nominates the candidate, and *the names of the candidates of the party which receives the largest number of votes at the last preceding state general election shall be listed first* (emphasis added).